IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TINA SUTTON,	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	
	:	
BARBARA KOONCE, Police Officer, and	**:**	
THE CITY OF PHILADELPHIA	**:**	
Defendants.	**:**	**NO. 97-2255**

M E M O R A N D U M

Reed, J. **March 31, 1999**

Presently before the Court is the motion of the City of Philadelphia ("City") for summary judgment (Document No. 31) and the response of pro se plaintiff Tina Sutton ("Sutton") thereto. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 and the Court has supplemental jurisdiction over the state and common law claims pursuant to 28 U.S.C. § 1367. Based on the following analysis, the motion will be granted.

I. Background

The following facts are based on the evidence of record viewed in the light most favorable to Sutton, the nonmoving party, as required when considering a motion for summary judgment. See Carnegie Mellon Univ. v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997). Sutton alleges that on May 16, 1996, while she was at a friends home, Officer Koonce and two other officers (John and Jane Does) illegally entered and searched the home. Sutton alleges that she demanded to see a search warrant. As a result she was attacked by the officers. The officers wrestled Sutton to the floor and handcuffed her. After being arrested and put into jail, Sutton

was released on bail. She was subsequently prosecuted for aggravated assault upon a police officer and related offenses. The charges were dismissed by the Honorable Lydia Kirkland on February 10, 1997, after a criminal trial.

II. Legal Standard

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Where the movant is the defendant, or the party without the burden on the underlying claim, as here, the movant does not have an obligation to produce evidence negating the opponent's case. The moving party rather must demonstrate that there is a lack of any evidence to support the nonmovant's claim. Celotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986). Once the movant satisfies this initial burden, the proponent of the claim must demonstrate to the court that there is sufficient evidence from which a jury might return a verdict in her favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The evidence presented must be significantly probative, not merely colorable. The Court does not resolve questions of disputed fact, but rather decides whether there is a genuine issue of material fact which must be resolved at trial. Id. The Court must view the facts in the light most favorable to the nonmoving party, and reasonable doubt as to the existence of a genuine issue of material fact is to be resolved against the moving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 158 (1970).

III. Discussion

A. Federal Claims

The City is a municipality. As such, the City cannot be held liable under 42 U.S.C. § 1983 ("Section 1983") solely because a City employee commits a tort. Monell v. Dept. of Social Serv., 436 U.S. 658, 694 (1978). When a plaintiff seeks to hold a municipality liable for the constitutional torts of its employees, the plaintiff must identify a municipal "policy" or "custom" that caused the plaintiff's injury. Id. Locating a "policy" ensures that a municipality is held liable only for constitutional deprivations which result from decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality. Board of the County Comm'rs of Bryan County, Okla. v. Brown, 117 S. Ct. 1382, 1388 (1997). For a subordinate's decision to be attributable to the municipality, "the authorized policymakers [must] approve [the] decision and the basis for it." City of St. Louis v. Praprotnik, 485 U.S. 112, 124 (1988). In addition, "an act performed pursuant to a 'custom' that has not been formally approved by an appropriate decision maker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law." Id. Accordingly, a municipality may be liable under Section 1983 if the plaintiff proves the existence of a widespread practice that is "so permanent and well settled as to constitute a 'custom or usage' with the force of law." Monell, 436 U.S. at 691 (quoting Adickes, 398 U.S. at 167-68).

Sutton argues that there is a genuine dispute as to whether the City has a custom or policy, albeit an unofficial custom or policy, of conducting warrantless searches and violating the rights of low income African American residents. Sutton argues that the only way to determine if the City has any such custom or policy is by "credibility determination and presentation of

evidence." Sutton correctly notes that the Court does not engage in credibility determinations at summary judgment. However, to withstand summary judgment, Sutton must present some evidence of such a custom or policy from which a reasonable juror could find that such a policy or custom exists. Conclusory statements regarding the existence of such a custom or policy do not create a genuine issue of fact.

To support her contention, Sutton argues that Officer Koonce has had numerous complaints lodged against her. (Document No. 22 Exh. A). The Internal Affairs Department has investigated incidents involving Officer Koonce on ten separate occasions over a five year period, from 1992 to 1997. Seven of those investigations involved complaints of physical and/or verbal abuse by Officer Koonce. None of the charges were sustained. However, Officer Koonce was cited as for acting unprofessionally in two instances where the complaint was verbal abuse. Charges brought against Officer Koonce by her supervisors that she gave false testimony to the Police Board of Inquiry regarding the validity of her license and that she submitted a forged sick leave certificate (and made false statements during the investigation) were also sustained. Finally, on charges that Officer Koonce committed perjury as a witness in a criminal trial and threatened the judge and public defender, Officer Koonce was found to have acted unprofessionally. The evidence was inconclusive as to the charge of perjury.

While these reports may support the conclusion that Officer Koonce was found to have committed misconduct in the past, they are not evidence that the City condoned her actions or had a policy, official or unofficial, of violating the constitutional rights of its residents. Even if Officer Koonce did violate the constitutional rights of Sutton, that alone does not create a policy on behalf of the City or the entire police force. On the contrary, the evidence submitted by

Sutton demonstrates that the City takes allegations of officer misconduct seriously and investigates such allegations fully.

Similarly, an account of one officer's transgressions is not evidence that a widespread practice exists that is "so permanent and well settled as to constitute a 'custom or usage' with the force of law." Monell, 436 U.S. at 691 (quoting Adickes, 398 U.S. at 167-68). Sutton, however, points to an article from 1995 discussing "Philadelphia's latest police scandal." See John Ritter, *City's Police Scandal Sows Seeds of Anger, Fear, Mistrust*, USA Today, August 31, 1995, at 5A. The article reports that nearly 50 convictions have been reversed in cases where the conviction was based upon evidence planted or fabricated by corrupt cops. The article further states that cops have admitted to beatings, illegal searches, robbing suspected dealers, and framing people just to get overtime pay testifying at trials. Another newspaper article reports that eleven drug convictions were vacated by the District Attorney's office because officers lied at trial. See Dave Racher, *Belated Justice After Cops "Lied,"* Philadelphia Daily News, March 25, 1997, at 13. The article further reports that as a result of three separate police corruption investigations, 293 drug cases have been dismissed in 1996-1997. Both articles report that, as a result, police officers have been convicted and jailed.

Although Sutton believes that these articles prove her case to a legal certainty, they do not establish the existence of a custom or policy which led to the alleged violations of Sutton's constitutional rights.[1] It is undisputed that the newspaper articles report the existence of police

[1]As a preliminary matter, I note that the articles are not directly on point. The 1995 article is dated. The events in this lawsuit occurred almost a year later, on May 16, 1996. In addition, the 1997 article focuses on corruption in the 39th District and on drug cases. Officer Koonce is assigned to the 17th District and to the Court's knowledge Sutton's claim does not involve the planting of false evidence or drug charges. Also, both articles focus on police misconduct resulting in tainted convictions. Here, all charges were dropped against Sutton in her criminal trial.

corruption. However, both articles report that police corruption is being investigated and that corrupt officers are being prosecuted and going to jail. There is no evidence that the corrupt officers were actually following a municipal policy or that the City acquiesced in the corrupt conduct of any officer. Similarly, there is no evidence that the corruption is so widespread and so permanent and well established that it constitutes a custom or usage for purposes of municipal liability. In sum, the articles alone are insufficient to establish that the City "institutionalized, authorized, tolerated or approved" the alleged misconduct of Officer Koonce and others. Cox v. County of Suffolk, 780 F. Supp. 103, 106 (E.D.N.Y. 1991).

No doubt Sutton believes that there is an unofficial policy or custom which led to the alleged violations of her constitutional rights. However, even if true, she has not presented any evidence to support her claim. The complaints regarding Officer Koonce and newspaper articles fall woefully short of supporting a claim of a municipal policy or custom. For a jury to return a verdict in her favor it would have to rely on unsupported speculation. Her conclusions are simply unsubstantiated. This is not sufficient to carry her burden on summary judgment. Accordingly, summary judgment will be granted and Sutton's claims against the City will be dismissed.

B. State Law Claims

In her complaint, Sutton also brought a claim under "the correlating Articles of the Pennsylvania Constitution." The City argues that the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. §§ 8541 et seq. ("Tort Claims Act") immunizes the City from claims brought under the laws of the Commonwealth of Pennsylvania. The Tort Claims Act provides in pertinent part that "no local agencies shall be liable for any damages on account of any injury to a

person or property cause by any act of the local agency or any employee thereof." 42 Pa. Cons. Stat. Ann. § 8541. In her response to the motion for summary judgment, Sutton appears to concede that the Act immunizes the City and "deletes the 'correlating Articles of the Pennsylvania Constitution' from said complaint and will only proceed upon the Federal Constitutional Amendments." Nevertheless, in the same sentence Sutton argues that one of the exceptions to immunity applies to her case. See 42 Pa. Cons. Stat. Ann. §§ 8542(b)(2).

Section 8542 of the Tort Claims Act creates limited exceptions to this general grant of immunity: (1) the operation of a motor vehicle; (2) the care, custody and control of personal property; (3) the care custody and control of real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) the care, custody and control of animals. 42 Pa. Cons. Stat. Ann. § 8542(b). Sutton argues that the second exception applies because she was "at her boyfriends [sic] home when her property and her person was [sic] abused by the Philadelphia Police." Nowhere in the complaint, however, is there an allegation of any damage to personal property.[2] Sutton alleges that she was attacked, wrestled to the ground and handcuffed. As a result, she alleges she suffered an injury to her ankle, exacerbated an old back injury and suffered mental distress. Allegations that the police assaulted her and seized and detained her against her will, however, are not sufficient to defeat the governmental immunity provided by the Tort Claims Act. See Burger v. Borough of Ingram, 697 A.2d 1037, 1342-43 (Pa. Cmwlth. 1997) (arrestee did not defeat governmental immunity by alleging that officers wrongfully arrested and imprisoned her, assaulted her and embarrassed her). Accordingly, the Tort Claims Act immunizes the City from Sutton's state law claims and

[2]Moreover, if she was at her boyfriend's house, any damage presumably would be to his property, not hers.

summary judgment will be granted with respect to the state law claims against the City.

C. Plaintiff's Motion for Summary Judgment

Finally, Sutton "renews her request for summary judgment." Sutton first moved for partial summary judgment on June 16, 1997. (Document No. 16). That motion was denied by Magistrate Judge Angel. (Document No. 20). Sutton then filed a motion for reconsideration which was also denied. (Document Nos. 22 & 23). Sutton's subsequent motion for relief from judgment was also denied as both untimely and on the merits. (Document Nos. 29 & 36).

"[T]he law of the case doctrine 'expresses the practice of the courts generally to refuse to reopen what has been decided.'" Williams v. Runyon, 130 F.3d 568, 573 (3d Cir. 1997) (quoting Messenger v. Anderson, 225 U.S. 436, 444 (1912)). The Court has carefully considered Sutton's motion for partial summary judgment on three separate occasions. There is nothing new in her present motion as she simply asks to renew her earlier motion. Accordingly, the motion will be dismissed under the law of the case doctrine.

IV. Conclusion

Based upon the foregoing memorandum, the motion of the City will be granted and the motion of Sutton will be denied. An appropriate Order follows.

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THE CITY OF PHILADELPHIA	**:**	
Defendants.	**:**	**NO. 97-2255**

ORDER

AND NOW this 31st day of March, 1999, upon consideration of the motion of the City of Philadelphia for summary judgment (Document No. 31), the response of pro se plaintiff Tina Sutton, and the supporting memoranda, pleadings, exhibits and affidavits submitted by the parties, and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the motion is **GRANTED**. Judgment is entered in favor of the City of Philadelphia and against Tina Sutton.

IT IS FURTHER ORDERED that the motion of Tina Sutton for partial summary judgement is **DENIED**.

IT IS FURTHER ORDERED that the parties shall submit a report to the Court no later than **April 30, 1999** as to the status of settlement. If the parties need the assistance of the Court in facilitating settlement negotiations, the parties shall so indicate. By said date, plaintiff shall contact the Deputy Clerk to arrange a date for a final scheduling conference.

LOWELL A. REED, JR., J.